IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1867 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRA GHANSHYAMBHAI LALWANI - Appellant(s)
Versus
AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Defendant(s)

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Appearance :
MR PUSHPADATTA VYAS for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR RR MARSHALL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/02/2007

ORAL JUDGMENT

1. The original claimant has approached this Court under Section 173 of the Motor Vehicles Act, 1988 for claiming enhancement of the compensation. He suffered

serious injuries in a vehicular accident which occurred on 18th October, 1993. On that day, he was going to Maninagar from Kalupur AMTS bus stand. It was around 8:10 p.m. At the Maninagar bus stand while he was getting down from the bus, the driver of the bus all of a sudden started the bus. As a result of this, the appellant fell down and he received serious injuries. Three fingers were fractured. He was treated by Dr. Yogesh Parikh. In view of the same, he preferred Motor Accident Claim Petition No. 287 of 1994 before Motor Accident Claims Tribunal [Auxi.] at Ahmedabad City for claiming compensation of Rs.75,000=00.

2. On the basis of the material produced before it, the Tribunal by judgment and award dated 3rd October, 2001 granted compensation of Rs.17,500=00 to the appellant together with running interest at the rate of 9% per annum from the date of the application till realization and the proportionate costs. Being dissatisfied with the quantum of compensation the appellant has now filed this appeal.

3. I have heard Mr. Pushpadatta Vyas learned advocate for the appellant and Mr. R.R. Marshall learned advocate for the respondents. According to Mr. Vyas, the

quantum of compensation is inadequate and it is required to be increased. He has submitted that the Tribunal has not appreciated the issue with regard to the grant of compensation or the loss of earning capacity in its proper perspective. He has submitted that even under the head of pain, shock and suffering, the compensation awarded by the Tribunal is on lower side. In his submissions, the Tribunal ought to have granted full claim. As against that Mr. Marshall has supported the judgment and has submitted that the award of the Tribunal is just and proper and it needs no interference by this Court.

4. I have carefully considered the submissions of the learned advocates. I have also closely perused the record of the case. So far as the aspect of the negligence is concerned, the Tribunal has held the driver of the offending vehicle wholly responsible for the accident. It has adequately discussed the issue in its judgment. The respondents have not challenged this finding and, therefore, it has become final. I have also applied my mind to this aspect and I have found that no error has been committed by the Tribunal.

5. So far as the quantum of compensation is

concerned, obviously it appears to be hopelessly inadequate. There is no dispute that the appellant had sustained fractures on second, third and fourth metatarsal. He was treated by Dr. Yogesh Parikh who has issued the certificate which is at Exh. 38. The said certificate adequately reflects the injuries sustained by the appellant. It further transpires from the evidence that though there was no hospitalization and the appellant was allowed to go home on the same day, he had to remain at home for almost three months and he could not go for the work. This say of the appellant has also been accepted by the Tribunal since it has awarded Rs.6,000=00 by way of actual loss of income, considering the income of the appellant as Rs.2,000=00 per month. It further appears that the resultant effect of these injuries has caused 11% permanent disability. It has considerably restricted the finger control of the appellant. Therefore, there is no difficulty in assuming that the appellant must have undergone tremendous pain and suffering due to the injuries sustained by him. He, therefore, deserves to have Rs.15,000=00 for pain, shock and suffering. The Tribunal has awarded only Rs.5,000=00 under this head. He, therefore, deserves to have 10,000=00 as additional compensation for pain and suffering.

6. So far as the future loss of income is concerned, the factor that has weighed with the Tribunal is that the appellant has not proved the actual loss caused to him. The Tribunal has taken into consideration the facts that the appellant was not dismissed from the employment nor there was any reduction in the salary and on the basis of the same, the Tribunal concluded that the appellant did not deserve any amount under the head of future loss of income. The Tribunal committed grievous error on this count. It is well settled proposition of law by now that compensation for the loss of earning capacity has to be awarded. The Division Bench of this Court in the case of **Mohanbhai Gemabhai v. Balubhai Savjibhai & Ors., reported in 1994 ACJ at pg 260**. has laid down as under :

> “16. It appears that the amount of compensation under this head is refused, as there was no ostensible or manifest immediate loss in the salary income of the claimant. With due respect, this approach of the Tribunal is not only erroneous, but is also illegal. The Tribunal is required to consider various aspects and relevant circumstances while determining the issue of award under the head of prospective economic loss. The claimant has sustained permanent partial disablement and there is no dispute about this aspect. The bodily integrity of the claimant is also substantially affected. The functions of the right arm are found to have been restricted and reduced to the extent of 50%. The claimant was young man of 30 years at the relevant time. Could it be, even for a

moment, conceived that the effect on the bodily integrity like that of the common and partial disablement to the extent of 16% in the use of right hand would not affect the earning capacity of the claimant? What is required to be examined is the effect sustained by the claimant on account of the accident on the earning capacity. The effect on earning capacity must be judged in the light of loss or permanently affected limb and the profession of the claimant or the employment of the victim of the road accident. Firstly, it is necessary to ascertain the extent of physical disability. Thereafter, it is necessary to find out to what extent the earning capacity of the injured is affected. No-doubt, it is true that the percentage of disablement may not correspond to the percentage of loss of earning. It is not entirely right to always make the future loss of income co-existent with that of disability. It is not an algebraic problem which can be solved by the abstract formula. What the evidence is as to the permanent disablement and what is the extent of impairment of the body or whether it is complete or partial? Whether it is temporary or permanent? An assessment must be made as to what effect such disability would have on entire function of the body and how it would consequently affect the earning capacity. It may happen that a person who has sustained significant impairment on a particular part of the body, and yet, it may not affect seriously his earning capacity, in so far as this particular type of avocation or employment is concerned, Conversely, it may happen that an impairment of hand or arm or legs to a person like labourers would materially affect his earning capacity. Therefore, it is not the only extent of disablement and, also, the extent of the impairment of body, but its resultant impact on the earning capacity which matters and has a role to play in the determination of reasonable and just amount of compensation.”

17. Considering the facts and circumstances, the nature and number of injuries, the extent of disablement and the resultant effect on the earning capacity, the Tribunal is bound to award just and reasonable amount of compensation under this head. Unfortunately, the appellant herein, the original claimant, is totally denied of this by the Tribunal, under the head of 'prospective economic loss'.”

7. In view of the aforesaid observations the appellant does deserve to have compensation under this head. Before the Tribunal, the appellant has deposed that he received Rs.2,000=00 monthly salary over and above the allowances which he received for travelling. He has submitted that after defects of the injures, the travelling had been curtailed and he is not able to do full justice to his job. The Tribunal has however, accepted the say to the extent that he received Rs.2,000=00 per month the salary. If that amount is taken to be the salary of the appellant on the date of the accident for determining the future loss of income, the rise in the income has to be kept in view. In accordance with the formula evolved in the case of Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1999 (1) GLR p. 388., the future income of the appellant could be Rs.3,000=00 per month. The disability is 11% in respect of the entire body. The monthly loss, therefore, would be Rs.330=00 and the annual loss would be Rs. 3,960=00. The appellant was aged about 22 to 23 years on the date of the accident, the multiplier of 17 therefore, safely can be applied. That would bring the future economic loss to Rs.67,320=00. He has already been awarded lump-sum amount of Rs.5,000=00 under this head. Therefore, he will be

entitled to receive additional sum of Rs.62,320=00 under this head. The entire amount if calculated, it exceeds the original claim of Rs.75,000=00. No request is made for enhancement of the claim. Hence, the award is to be restricted to Rs.75,000=00. In other words, the appellant would be entitled to receive a sum of Rs.75,000=00 inclusive of the amount already awarded by the Tribunal together with interest at the rate of 9% per annum from the date of the application till realization and proportionate costs. The respondents are directed to deposit the additional amount awarded by this Court within six months from the date of this judgment.

8. In the result, the appeal is allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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